

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 COLUMBIA DIVISION

Nationstar Mortgage, LLC,)	C/A No. 3:16-1469-JFA-PJG
)	
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
Marcus L. Hall, Rosa C. Hall, Deer Lake)	
Homeowners Association, Inc.,)	
)	
Defendants.)	
)	

Marcus L. Hall and Rosa C. Hall (“the Halls”) filed a notice of removal which purports to remove Civil Action No. 2015-CP-40-7210 from the Richland County Court of Common Pleas. (ECF No. 1.) This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). Having reviewed the pleadings in accordance with applicable law, the court concludes that this case should be remanded *sua sponte* to the state court for lack of subject matter jurisdiction.

I. Procedural Background

The Halls filed a notice of removal for this state foreclosure action associated with property located at 160 Deer Lake Drive, Columbia, South Carolina. (ECF Nos. 1 at 1-2; 1-1 at 23-24.) The notice of removal indicates the basis for removal is a lack of subject matter jurisdiction. (ECF No. 1 at 1.) Plaintiff Nationstar Mortgage, LLC (“Nationstar”) has not yet filed a response to the notice of removal or otherwise appeared in this court. Defendant Deer Lake Homeowners Association, Inc. (“Deer Lake”) has likewise not appeared in this court.

II. Discussion

As an initial matter, when a case is removed on the basis of federal question jurisdiction, all properly joined and served defendants “must join in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). The Halls provide no indication that Defendant Deer Lake has consented to the removal of the case from state court. Thus, the Halls have failed to comply with the provision of the removal statute requiring all defendants to consent to removal of the action. See Payne ex rel. Estate of Calzada v. Brake, 439 F.3d 198, 203 (4th Cir. 2006) (holding that the failure of all defendants to join in the removal petition constituted an error in the removal process); Wells Fargo Bank, N.A. v. Hunt, C/A No. 6:13-1333-MGL-KFM, 2013 WL 6383255, at *3 (D.S.C. Nov. 22, 2013) (order adopting and incorporating report and recommendation for remand of foreclosure action due to lack of jurisdiction and because not all defendants joined in the notice of removal). Moreover, as discussed below, the instant case would be subject to remand even if this statutory requirement were met.

Federal courts are courts of limited jurisdiction, see Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994), and a district court is charged with ensuring that all cases before it are properly subject to such jurisdiction. In re Bulldog Trucking, Inc., 147 F.3d 347, 352 (4th Cir. 1998). Generally, a case can be filed in federal district court if there is diversity of citizenship under 28 U.S.C. § 1332, or if there is federal question jurisdiction under 28 U.S.C. § 1331. The removal statute, 28 U.S.C. § 1441, allows a state court defendant to remove a case to a federal district court if the state court action could have been originally filed there. See Darcangelo v. Verizon Commc’ns, Inc., 292 F.3d 181, 186 (4th Cir. 2002). However, the removing defendant has the burden of establishing subject matter jurisdiction, Mulcahey v. Columbia Organic Chem. Co., Inc., 29 F.3d 148, 151 (4th Cir. 1994), and a district court may remand a case *sua sponte* to state court

if federal jurisdiction is lacking. See Ellenburg v. Spartan Motors Chassis, Inc., 519 F.3d 192, 196 (4th Cir. 2008).

The United States Supreme Court has commanded that, when considering jurisdiction over a removed case, federal courts must “scrupulously confine their own jurisdiction to the precise limits which the statute has defined.” Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 109 (1941) (internal quotation marks and citation omitted). In addition, “[r]emoval statutes must be strictly construed against removal,” Scott v. Greiner, 858 F. Supp. 607, 610 (S.D. W. Va. 1994), and a federal court must “resolve all doubts about the propriety of removal in favor of retained state court jurisdiction.” Marshall v. Manville Sales Corp., 6 F.3d 229, 232 (4th Cir. 1993); see also Palisades Collections LLC v. Shorts, 552 F.3d 327, 333-34 (4th Cir. 2008); Mulcahey, 29 F.3d at 151 (“If federal jurisdiction is doubtful, a remand is necessary.”).

It is well settled that a federal question must be presented on the face of a plaintiff’s complaint to satisfy federal question jurisdiction. Harless v. CSX Hotels, Inc., 389 F.3d 444, 450 (4th Cir. 2004) (discussing the well-pleaded complaint rule). Further, a plaintiff may avoid federal jurisdiction by exclusively relying on state law. Caterpillar, Inc. v. Williams, 482 U.S. 386 (1987). In the present case, the Halls seek to remove a state law foreclosure action. However, no federal jurisdiction exists over a complaint which “merely states a cause of action for enforcement of a promissory note and foreclosure of the associated security interest in real property.” Burbage v. Richburg, 417 F. Supp. 2d 746, 749 (D.S.C. 2006); see also Pettis v. Law Office of Hutchens, Senter, Kellam and Pettit, C/A No. 3:13-147-FDW, 2014 WL 526105, at *2 (W.D.N.C. Feb. 7, 2014) (collecting cases); Deutsche Bank Nat’l Trust Co. v. Lovett, C/A No. 3:12-1819-JFA, 2013 WL 528759, at *2 (D.S.C. Feb. 11, 2013) (adopting report and recommendation remanding foreclosure case to state court). To the extent the Halls attempt to raise defenses to the foreclosure

action based on a federal law in this case or in some case yet to be filed, such defenses do not establish jurisdiction. See Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 808 (1986); Cook v. Georgetown Steel Corp., 770 F.2d 1272, 1275 (4th Cir. 1985) (“A federal defense to a state cause of action is not sufficient to invoke federal jurisdiction.”). Because it is clear that removal of this case under federal question jurisdiction is improper, the matter should be remanded *sua sponte* to state court. See Ellenburg, 519 F.3d at 196 (“In the case where remand is based on lack of subject matter jurisdiction, the remand order may be entered at any time, for jurisdiction goes to the very power of the court to act.”).¹

III. Conclusion

The court recommends that the district judge remand this matter to state court for lack of subject matter jurisdiction.



Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

May 31, 2016
Columbia, South Carolina

*The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”*

¹ The court also notes that Plaintiff failed to allege in the pleadings that the court has diversity jurisdiction over this case. See Fed. R. Civ. P. 8(a)(1) (“A pleading that states a claim for relief must contain: a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support[.]”); see also Pinkley, Inc. v. City of Frederick, Md., 191 F.3d 394, 399 (4th Cir. 1999) (“[T]he facts providing the court jurisdiction must be affirmatively alleged in the complaint.”). However, removal based on diversity jurisdiction would be barred in this action regardless of the sufficiency of the pleadings. See 28 U.S.C. § 1441(b)(2); Lincoln Prop. Co. v. Roche, 546 U.S. 81, 96 (2005) (“An in-state plaintiff may invoke diversity jurisdiction, but § 1441(b) bars removal on the basis of diversity if any party in interest properly joined and served as a defendant is a citizen of the State in which the action is brought.”) (internal quotations omitted). The notice of removal and accompanying documents indicate the Halls are residents of South Carolina. (ECF Nos. 1 at 2; 1-1 at 23.) Accordingly, the Halls may not rely on diversity jurisdiction to remove this action.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).